IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Jacquelyn Martino et al.
Serial No.	:	10/037,445
Confirmation No.	:	4835
Filing Date	:	December 31, 2001
Group Art Unit	:	2168
Examiner	:	Greta Lee Robinson
For	:	Sort Slider with Context Intuitive Sort Keys

APPEAL BRIEF
On Appeal from Group Art Unit 2168

Date: January 14, 2008

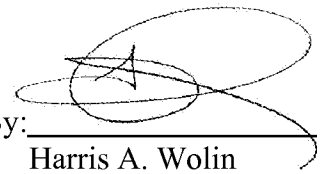
By: 
Harris A. Wolin
Attorney for Appellant
Reg. No. 39,432
For: Yan Glickberg, Esq.
Reg. No. 51,742
Senior IP Counsel
Philips Electronics N.A. Corporation
(440) 483-3455

TABLE OF CONTENTS

I. REAL PARTY IN INTEREST

The real party in interest is Koninklijke Philips Electronics N.V., the assignee of record as per an assignment recorded on May 23, 2002, at Reel/Frame 012918/0019.

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any pending appeals, judicial proceedings, or interferences which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

a) Claims 1, 3-6, 8-11, 13-15 and 21-23 are pending. Claims 1, 6, and 11 are independent. Claims 2, 7, 12, 16-20 and 24 are canceled.

b) Claims 1, 3-6, 8-11, 13-15 and 21-23 stand rejected and are the subject of this appeal.

IV. STATUS OF AMENDMENTS

The claims listed in section "VIII. Claims Appendix" of this Appeal Brief correspond to the claims submitted and amended in Appellant's response of May 29, 2007. These claim amendments were entered by the Examiner as indicated in the final Office Action of August 14, 2007. No claim amendments have been submitted following Appellant's response of May 29, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention, as recited in claim 1, is directed to a system for producing a list of results (Figures 2A-3; Abstract; page 18, lines 15-20), the system comprising a sort controller receiving a plurality of information items regarding content (Figure 1, reference numbers 101, 102; page 7, line 11 - page 11, line 5), wherein, to produce the list of the results, the sort controller sorts the information items using a primary sort key and a secondary sort key (Figures 2A-3; page 10, line 19 - page 11, line 5; page 12, lines 1-8) derived from predetermined user sorting preferences (Abstract; page 10, lines 7-12; page 12, lines 1-8, 23) for a current user task context and a content type for the information items (Abstract, line 1; page 3, lines 1-8; Figures 2A-3; page 11, lines 6-10; page 15, line 21 - page 16, line 3; page 17, lines 19-22).

The claimed invention, as recited in claim 6, is directed to an apparatus for producing a list of results, the apparatus (Figure 1; page 7, line 11 - page 8, line 12) comprising one of: an audio receiver (Figure 1, Reference Number 111), a video receiver (Figure 1, Reference Number 110), an Internet access device (Figure 1, Reference Number 112), and a remote control device (Figure 1, Reference Number 113), said apparatus comprising an input for receiving content and a plurality of information items regarding the content (page 8, lines 13-23); and a sort controller for producing the list of results by receiving and sorting the information items using a primary sort key and a secondary sort key (Figures 2A-3; page 10, line 19 - page 11, line 5; page 12, lines 1-8) derived from predetermined user sorting preferences (Abstract; page 10, lines 7-12; page 12, lines 1-8, 23) for a current user task context and a content type for the information items (Abstract, line 1; page 3, lines 1-8; Figures 2A-3; page 11, lines 6-10; page 15, line 21 - page 16, line 3; page 17, lines 19-22).

The claimed invention, as recited in claim 11, is directed to a sorting method (Figure 3, pages 17-19) comprising receiving content and a plurality of information items regarding the content (Figure 3, step 301; page 17, line 22) and sorting the information items using a primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and a content type for the information items; producing a list of results; and providing the list of results to a user (Figure 3; page 17, line 19 - page 18, line 20)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 3-6, 8-11, 13-15 and 21-23 are properly rejected under 35 U.S.C. §103(a) as being unpatentable over Hiyoshi (U.S. Patent 6,601,067) (hereinafter Hiyoshi) in view of Schindler (U.S. Patent 6,199,064) (hereinafter Schindler).

VII. ARGUMENT

Claims 1, 3-6, 8-11, 13-15 and 21-23 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Hiyoshi in view of Schindler.

Claims 1, 3-6, 8-11, 13-15 and 21-23

Appellant respectfully disagrees with the Examiner's positions set forth in the Final Office Action of August 14, 2007, and requests reversal of the Examiner's decisions in view of the arguments presented herewith.

Appellant maintains and reiterates that a *prima facie* case of obviousness has not been established. Appellant has previously requested that the Examiner specifically point out and designate the relevant columns and lines, where Schindler allegedly teaches the totality of

primary and secondary sort keys derived from predetermined user sorting preferences for a current user task context and content type, as recited in the rejected claims. As will be discussed below, Appellant believes that the Examiner has again failed to provide such a teaching. Accordingly, Appellant has no duty to rebut the outstanding obviousness rejection because a *prima facie* case of obviousness has not been established. However, for the sake of completeness and in making a good faith effort to advance prosecution in a meaningful way, Appellant argues as follows.

Independent claim 1 recites, inter alia, *the sort controller sorts the information items using a primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and a content type for the information items.*

Independent claim 6 recites, inter alia, *a sort controller for producing the list of results by receiving and sorting the information items using a primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and a content type for the information items.*

Independent claim 11 recites, inter alia, *sorting the information items using a primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and a content type for the information items.*

Each independent claim, and therefore the claims dependent therefrom, rely on a *primary sort key* ***and a*** *secondary sort key* ***derived from predetermined user sorting preferences for a current user task context and a content type*** *for the information items.*

In the Final Office Action of August 14, 2007, it is noted that:

> "**Hiyoshi does not specifically teach "primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and content type"**, however this feature is taught by Schindler. Schindler teaches items are sorted by the value of their **context** and that the **context** is used to define the primary sort key and the secondary sort key [see: column 7 lines 45-65 items are sorted by the value of their context ; column 8 lines 39-66; and column 11 lines 30-39 "using the context to define the primary sort key" and "deriving a secondary sort key"]. It would have been obvious to one of ordinary skill at the time of the invention to have combined Schindler with Hiyoshi because Schindler teaches how the primary and secondary sort keys are derived from a function of the **context** for sorting which is predetermined." (**emphasis added**)

On page 5 of the Final Office Action of August 14, 2007, it is further noted that:

> Schindler teaches "using the **context** to define the primary sort key" and "deriving a secondary sort key" see column 11 lines 30-39. Schindler's teaching of the ability to define the sort key provides for the limitation of "predetermined user preference". Schindler provides for the concept of information items being sorted by the value of their **context** through bucketsort function and gives an example see column 7 lines 45-65 and Figure 9 step 425 SORT DATA BY CONTEXT. Applicant is reminded that during patent examination the pending claims are given the broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F. 3d 1048, 1054-55,44 USPQ2d 1023, 1027-28 (Fed. Cir.

> 1997). Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim. In the present case a statement of intended use or field of use is not limiting. (**emphasis added**)

The above discussion by Examiner further supports the Applicant's position that a prima facie case of obviousness has **not** been successfully established by the combination of Hiyoshi and Shindler. Specifically, Shindler fails to teach the totality of "**primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and content type**." The Examiner's discussion on page 5 of the Final Office Action of August 14, 2007, is woefully parsed and neglects to consider the totality of the relevant language from Applicant's claims.

Firstly, Applicant reiterates that the reliance on col. 7, lines 45-65 and col. 8, lines 39-66, as well as the claim language in col. 11, lines 30-39, in Shindler **fails to provide a teaching** of the claimed invention and **fails to remedy the deficiency** in teaching in Hiyoshi. The featured computer code on col. 7, lines 45-65 and col. 8, lines 39-66 teaches transformation and inverse transformation of a source data block, as required by the featured sorting scheme, using secondary sort keys derived from the position of each data value having predetermined length within the source data block. See col. 7, lines 26-27; col. 7, lines 32-35; col. 8, lines 24-25; col. 11, lines 30-33. With respect to secondary sort keys, Schindler expressly stated that they must be derived from the position of each data value having a predetermined length within a source data block. See col. 1, lines 47-54. Furthermore, Schindler graphically demonstrates how these secondary sort keys are derived and used in the sorting process. See Index 154 in Fig. 5A and

Fig. 5B and col. 4, lines 46-51. However, deriving a secondary sort key from the position of a data value having a predetermined length within a data block, as taught in Schindler, is **categorically different** from deriving a secondary sort key from predetermined user sorting preferences for a current user task context and a content type for the information items, as recited in claim 1 and similarly recited in claims 6 and 11 and the claims dependent therefrom.

Secondly, Applicant's claim element, when read in its entirety, requires a primary sort key and a secondary sort key **derived from predetermined user sorting preferences for a current user task context and content type**. In other words, the primary and secondary sort keys (a) are derived from (b) predetermined user sorting preferences (c) for a current user task context and (d) content type. Applicant's claim element does not separately set forth these elements in an unconnected fashion. Instead, the primary **and** secondary sort keys **are derived from** predetermined user sorting preferences **for a** current user task context **and** content type. The totality of the claim element is not parseable as set forth in the following Examiner arguments from page 5 of the Final Office Action of August 14, 2007:

> "Schindler's teaching of the ability to define the sort key provides for the limitation of "predetermined user preference".
>
> Schindler provides for the concept of information items being sorted by the value of their **context** through bucketsort function and gives an example see column 7 lines 45-65 and Figure 9 step 425 SORT DATA BY CONTEXT.

Specifically, Applicant respectfully submits that "the ability to define a sort key" in Shindler **does not teach** the **totality** of the claimed "primary and secondary sort keys are derived from predetermined user sorting preferences for a current user task context and content type."

Similarly, Applicant respectfully submits that simply sorting by **context,** as shown in step 425 of Figure 9 of Shindler, fails to teach a relationship with **predetermined user sorting preferences for a current user task context and content type**.

Thirdly, Applicant's claim element specifically requires a primary sort key and a secondary sort key to be derived from predetermined user sorting preferences for a current user task context **and content type**. The teaching of **content type**, and more completely predetermined user sorting preferences for a **current user task content and content type** is conveniently **absent** from any prior arguments or Office Actions that focus solely on the concept of **context** (as emphasized above) and neglect any discussion of **content type**.

Finally, Applicant respectfully traverses, as **inexplicably conclusory and unsupported by any direct relationship whatsoever to Applicant's claims**, the following statements from page 5 of the Office Action of August 14, 2007 : "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim. In the present case a statement of intended use or field of use is not limiting."

Conclusion

In light of the above, Appellant respectfully submits that the rejection of claims 1, 3-6, 8-11, 13-15 and 21-23 is in error, legally and factually, and must be reversed.

Respectfully submitted,

Date: January 14, 2008

By: _____

Harris A. Wolin
Attorney for Appellant
Reg. No. 39,432
For: Yan Glickberg, Esq.
Reg. No. 51,742
Senior IP Counsel
Philips Intellectual Property & Standards
(440) 483-3455

Please direct all future correspondence to:

Yan Glickberg, Esq.
Senior IP Counsel
Philips Intellectual Property & Standards
Phone: (440) 483-3455
Fax: (914) 332-0615
Email: yan.glickberg@philips.com

VIII. CLAIMS APPENDIX

1. (Previously Presented) A system for producing a list of results, the system comprising:

a sort controller receiving a plurality of information items regarding content,

wherein, to produce the list of the results, the sort controller sorts the information items using a primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and a content type for the information items.

2. (Canceled)

3. (Previously Presented) The system according to claim 1, wherein the primary sort key is selected by the user and the secondary sort key is selected based on a the nature of the current user task context inferred from the primary sort key selected by the user.

4. (Previously Presented) The system according to claim 1, wherein a change in the current user task context is inferred from a change of the primary sort key by the user.

5. (Previously Presented) The system according to claim 1, wherein the plurality of information items are displayed in an order determined by the sort controller together with a user control calibrated to groupings having equivalent values under the primary sort key.

6. (Previously Presented) An apparatus for producing a list of results, the apparatus comprising one of: an audio receiver, a video receiver, an Internet access device, and a remote control device, said apparatus comprising:

an input for receiving content and a plurality of information items regarding the content; and

a sort controller for producing the list of results by receiving and sorting the information items using a primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and a content type for the information items.

7. (Canceled).

8. (Previously Presented) The apparatus according to claim 6, wherein the primary sort key is selected by the user and the secondary sort key is selected based on the nature of the current user task context inferred from the primary sort key selected by the user.

9. (Previously Presented) The apparatus according to claim 6, wherein a change in the current user task context is inferred from a change of the primary sort key by the user.

10. (Previously Presented) The apparatus according to claim 6, wherein the plurality of information items are displayed in an order determined by the sort controller together with a user control calibrated to groupings having equivalent values under the primary sort key.

11. (Previously Presented) A sorting method comprising:

receiving content and a plurality of information items regarding the content; and

sorting the information items using a primary sort key and a secondary sort key derived from predetermined user sorting preferences for a current user task context and a content type for the information items;

producing a list of results; and

providing the list of results to a user.

12. (Canceled).

13. (Previously Presented) The method according to claim 11, wherein the primary sort key is selected by the user and the secondary sort key is selected based on the nature of the current user task context inferred from the primary sort key selected by the user.

14. (Original) The method according to claim 11, wherein a change in the current user task context is inferred from a change of the primary sort key by the user.

15. (Previously Presented) The method according to claim 11, further comprising:

displaying the plurality of information items in an order determined by sorting using the primary and secondary sort keys together with a user control calibrated to groupings having equivalent values under the primary sort key.

16-20. (Canceled)

21. (Previously Presented) The system according to claim 1, further comprising a user interface communicably coupled to the sort controller to receive user input identifying the current user task context.

22. (Previously Presented) The apparatus according to claim 6, further comprising a user interface communicably coupled to the sort controller to receive user input identifying the current user task context.

23. (Previously Presented) The method according to claim 11, further comprising: receiving user input identifying the current user task context.

24. (Canceled)

IX. EVIDENCE APPENDIX

No evidence has been submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title nor any other evidence entered by the examiner and relied upon by appellant in the appeal.

X. RELATED PROCEEDINGS APPENDIX

Appellant is not aware of any appeals or interferences related to the present application.